

1996

Nathan R. Maxfield and Heritage Hunting and Recreation Club v. Lester Romero : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Wesley F. Sine; Attorney for Appellants.

E. H. Fankhauser; Attorney for Appellees.

Recommended Citation

Reply Brief, *Maxfield v. Romero*, No. 960195 (Utah Court of Appeals, 1996).
https://digitalcommons.law.byu.edu/byu_ca2/131

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU

50

.A10

UTAH COURT OF APPEALS OF THE STATE OF UTAH
DOCKET NO. 960195

STATE OF UTAH

NATHAN R. MAXFIELD and HERITAGE)
HUNTING & RECREATION CLUB,)

Plaintiff and)
Appellees,)

vs

LESTER ROMERO, LEMAX CORPORATION)
AND GOLDEN CIRCLE INVESTMENT)
CORP.,)

Defendants and)
Appellants.)

Case No. 960195
950553
940904835

Priority No. 15

APPELLANT'S REPLY BRIEF

Appeal from the Third District Court of Utah and an Order
for Summary Judgment by the Honorable Judge Leslie A. Lewis

Appellants:
WESLEY F. SINE
Attorney for Appellants
Beneficial Towers 12'th Floor
36 South State Street
Salt Lake City, Utah 84111

Appellee
E. H. Fankhauser
Attorney for Appellees
243 East 400 South, Suite 200
Salt Lake City, Utah 84111

FILED

JUL 10 1996

COURT OF APPEALS

TABLE OF CONTENTS

REPLY BRIEF.....	Page	4
POINT I THE CLAIMS OF THE DEFENDANTS ARE SUPPORTED BY THE AFFIDAVIT OF ROMERO AND NUMEROUS DOCUMENTS	Page	4
POINT II THE CLAIMS OF THE DEFENDANT ROMERO ARE NOT BARRED BY THE STATUTE OF LIMITATIONS AS THE TIME OF ACTUAL KNOWLEDGE OF THE HAPPENING STARTS THE CLOCK	Page	6
POINT III THE TRUST DEED FROM GOLDEN CIRCLE TO THE BENEFIT OF LEMAX IS NOT BARRED BY THE STATUTE OF LIMITATIONS	Page	7
CONCLUSION.....	Page	7
CERTIFICATE OF SERVICE.....	Page	9

UTAH COURT OF APPEALS OF THE
STATE OF UTAH

NATHAN R. MAXFIELD and HERITAGE)
HUNTING & RECREATION CLUB,)
)
Plaintiff and)
Appellees,)
vs)
)
LESTER ROMERO, LEMAX CORPORATION)
AND GOLDEN CIRCLE INVESTMENT)
CORP.,)
)
Defendants and)
Appellants.)

Case No. 960195
950553
940904835

APPELLANTS' REPLY BRIEF

POINT I

THE CLAIMS OF THE DEFENDANTS ARE SUPPORTED BY THE AFFIDAVIT OF ROMERO AND NUMEROUS DOCUMENTS

This action was dispensed with on a Motion for Summary Judgment. The affidavit of the Defendant Romero stated that he did not have authority to sign the various deeds at the time they were signed. Furthermore, his affidavit states that the property if indeed it was transferred, was to be held in trust by Maxfield and was not to be encumbered. The affidavit further states that at all times up until 1992, he was in possession of the property of which this lawsuit is predicated upon.

All of the above issues, must be accepted as true by the Court in determining whether a Motion for Summary Judgment is allowed. If the Deeds were signed without authority and Romero

was in possession of the land during the various transactions pertaining to the land, then the title to the property would still be in the name of the corporation. At the time the holder of the stock of the corporation, Romero's father, died, the stock would then have been inherited by the children and at the time the corporation was canceled by the State, it would have become a sole proprietorship or a partnership, depending upon the number of heirs.

Furthermore, the Defendant testified that the property was to be held in trust by Plaintiffs. The Plaintiff Maxfield tried to clear title by allowing a trustee sale to go forth and then buying the property back through a company which Maxfield controlled. During all of this time, the Defendant Romero was allowed to possess the property and was never notified that this particular piece of land had a Trust sale. Never, according to the affidavit of Romero, was the Defendant Romero legally removed from the property during the short period of time when Lisonbee proceeded with a Trustee sale and then sold the property to Defendant Heritage or until 1992 when he voluntarily removed numerous vehicles so that the property could be sold for him by Maxfield. Heritage a corporation which Maxfield had an interest in and controlled.

The only eviction which Lisonbee issued against Maxfield was one against his home. Not against the present property as the Plaintiffs have intimated.

There are simply too many issues of fact which need to be

heard by a trier of facts in order to determine what really happened and in what capacities the various parties were to each other.

POINT II

THE CLAIMS OF THE DEFENDANT ROMERO ARE NOT BARRED BY THE STATUTE OF LIMITATIONS AS THE TIME OF ACTUAL KNOWLEDGE OF OF THE HAPPENING STARTS THE CLOCK

The Defendant Romero possessed the property which is the subject of this lawsuit until 1992. At that time according to the affidavit of Romero, he was told by Maxfield that he had a sell for the other property and would sell Romero's property at the same time if he would remove the cars he was storing on the property. Romero agreed and removed the cars.

He did not hear anything else from Maxfield and fearing that he was trying to cheat him, he filed a Trust Deed which had been issued some time prior as protection.

The Trust Deed is not effected by the Statute of Limitations. It is valid until paid off. Defendants presented a Note which the Trust Deed guaranteed. This note had not been paid off. Defendant's affidavit stated that this note was intended to be secured by the Trust Deed.

The bottom line to the matter is that the Defendant Romero did not know that anything had happened to injure his title to the property until this lawsuit or shortly before. He did not know that Lisonbee had held a Trustee Sale on the this particular piece of property. He knew that one had been held on his home from which he was evicted. But he was never evicted from this

piece of property and never notified that it had been sold until now.

The constructive notice of the recording of the Trustee Sale did not impart notice to the Defendant. His remaining on the property imparted notice to all who took via the Trustee Deed that he had an interest in the property which needed to be dealt with.

POINT III

THE TRUST DEED FROM GOLDEN CIRCLE TO THE BENEFIT OF LEMAX IS NOT BARRED BY THE STATUTE OF LIMITATIONS

Contrary to Plaintiffs' allegations, the Defendants did not have notice of the Trustee Sale by Lisonbee - that is his testimony contained in his affidavit. All of the parties were business associates working together. Now one of the partners tried to squeeze the other party out of what was rightfully his.

Clearly there is sufficient conflict between the parties facts, to warrant this matter being tried by a trier of fact and given its day in Court so that justice might prevail.

CONCLUSION

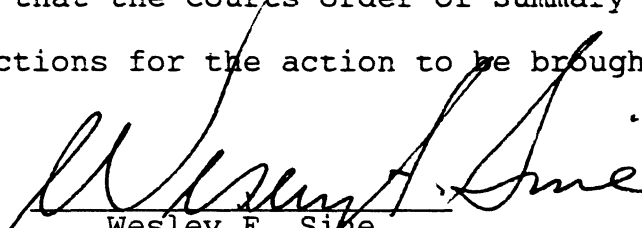
Much of what has been stated in this Reply Brief, was argued in the Defendants' Brief. The basic fact is that there is a complete conflict in the affidavits of the Defendants and the Plaintiffs. The Plaintiffs claim an arms length transaction culminating in a Trustee Sale with the property ultimately being purchased by the same parties. A corporation which had as its officers, the Maxfields - the same party that the Trustee Sale

took the property from. Clearly not an arms length transaction as to Defendant Romero.

Defendant Romero continued in possession of the property through 1992. Contrary to Plaintiffs allegations he was never served with a notice of eviction as to the property which is the subject of this lawsuit.

This case cries for the open air of a full trial where the issues of truth may be weighed by the trier of Fact so that the issues of Law can be determined.

Defendants request that the Courts order of Summary Judgment be reversed with instructions for the action to be brought to trial.

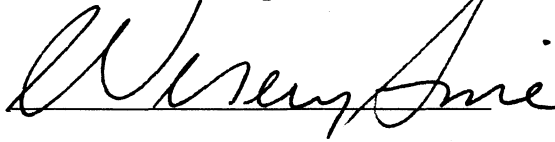


Wesley F. Sine

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing APPELLANTS' REPLY BRIEF were served by mailing the same, first class, postage prepaid, this 10'th day of July 1996, to the following:

E. H. Fankhauser, Esq.
243 East 400 South, Suite 200
Salt Lake City, Utah 84111

A handwritten signature in dark ink, appearing to read "E. H. Fankhauser", is written over a horizontal line.